

REMARKS

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and following remarks. Claims 1, 4-15, 52, 54-60, 68-78, and 81-83 are pending in the application. Independent claims 1 and 52 have been amended. Applicant respectfully traverses the rejection over the remaining claims.

Claim Rejections Under 35 U.S.C. § 103

The Action rejects all claims under 35 U.S.C. § 103 as being unpatentable over Jorgenson *et al.* (US 2002/0095232) in view or Robinson (US 2001/0029996). Applicant respectfully traverses the rejection as the references of record fail to disclose or suggest the claimed features.

The claims of the present application are directed to commingling of commodities and how such a commingling can be tracked. First, it should be noted that neither Robinson nor Jorgenson *et al.* discuss commingling of commodities at all. Indeed, both Robinson and Jorgenson *et al.* arguably teach away from commingling by tracking products separately. The Examiner argued that paragraph 50 and FIG. 5 of Robinson disclosed “assigning a new lot identifier each time the grown commodities from two or more of the different fields are commingled.” (Office action, page 3). However, that paragraph and Figure in Robinson have nothing to do with tracking of a commingled product. For example, Robinson provides a long list of properties that can be tracked. (See Robinson, paragraph 50). However, none of those properties relates to commingling of product. Instead, Robinson states that the properties tracked can be “any other information for identification, **segregation** or marking purposes.” (See Robinson, paragraph 50). Thus, Robinson is focused on segregation, which is the exact opposite of commingling and therefore teaches away from tracking “commingled” product. There is nothing in Robinson that discusses commingling of products, nor tracking such commingled products.

Furthermore, it appears in the principal embodiment in Robinson discloses using a cardboard marker thrown into the material to assist in tracking. (See Abstract). Figure 5

discusses putting data relating to the material on the marker before it is dumped into the material. Figure 2 shows a marker, such as at 106, buried in the material.

Applicant respectfully requests the Examiner to further explain how a new lot identifier can be assigned to a buried marker, such as marker 106 (see Figure 2 of Robinson), each time two or more commodities of the different fields are commingled. Robinson not only does not disclose assigning such a new lot identifier, but it appears difficult, if not impossible, to make such an assignment once the marker is deployed.

Applicant's representative believes that Jorgenson *et al.* also does not disclose commingling of lots, and the Examiner has not attempted to make such an argument. Therefore, it does not appear to be necessary to further discuss Jorgenson *et al.* because neither Jorgenson *et al.* alone or in combination with Robinson show the claimed features.

Independent Claim 1

Nonetheless, Applicant has amended Claim 1 to further remove it from the prior art of record. In particular, claim 1 requires "the new electronic lot identifier tracking the commingled lot and tracking the previously non-commingled lots as a single lot identifier". Support for this amendment is found at page 10, line 29 through page 11, line 1: "a new lot is effectively created and lot tracking system 10 tracks both the new combination and the original lots with a single lot identifier."

Robinson does not discuss a single lot identifier used for tracking commingled lots and previously non-commingled lots. Indeed, Robinson does not discuss tracking commingled lots at all. Additionally, to the extent that a cardboard marker buried in material, such as shown at 106 in Figure 2, is considered a "lot identifier", it is not electronic nor can it be considered a single lot identifier tracking commingled lot and previously non-commingled lots.

Jorgenson *et al.* also does not disclose commingling of lots as described above. Thus, neither Robinson nor Jorgenson *et al.* show an element of the claim and, therefore, a finding of obviousness is improper.

Independent Claim 52

Amended Claim 52 includes the following limitations:

“assign a first lot identifier to a lot;”

“assign a new lot identifier each time two or more lots containing grown commodities from the different fields are commingled” and

“the new lot identifier tracking the commingled commodities and tracking the grown commodities as if they were not commingled using a single lot identifier.”

If a first lot identifier is assigned in Robinson and a marker is deployed into material as shown in Figure 2, it appears difficult, if not impossible, to assign a new lot identifier at some later point. Thus, neither Robinson nor Jorgenson, et al. describe a new lot identifier tracking the commingled commodities and tracking the grown commodities as if they were not commingled using a single lot identifier.

Independent Claim 68

The rejection of claim 68 is respectfully traversed. The paragraphs cited in Robinson have nothing to do with tracking of commingled lots as required by claim 68. Specifically, claim 68 requires that a new lot identifier is assigned when there are commingled commodities. The Examiner cites Robinson’s abstract and paragraph 50, neither of which describe assigning a new lot identifier when there are commingled lots. Indeed, assigning a new lot identifier in Robinson makes no sense as the old lot identifier would need to be crossed out and a new lot identifier inserted. As described above, with the markers of Robinson buried in material as shown in Figure 2, such an assignment of a new lot number appears impractical. There simply is no description in Robinson related to assignment of a new lot identifier.

Independent Claim 81

Claim 81 similarly requires a “new lot identifier when the grown commodities from two or more of the different fields are commingled...” Again, neither Robinson nor Jorgenson *et al.* describe creating a new lot identifier when there is commingling of commodities.

Dependent Claims

All other claims depend from the independent claims and should be allowable for the reasons stated above.

INTERVIEW REQUEST

If any issues remain, the Examiner is formally requested to contact the undersigned attorney prior to issuance of the next Office Action in order to arrange a telephonic interview. It is believed that a brief discussion of the merits of the present application may expedite prosecution. Applicants submit the foregoing formal Amendment so that the Examiner may fully evaluate Applicants' position, thereby enabling the interview to be more focused.

CONCLUSION

The claims in their present form should be allowable. Such action is respectfully requested.

Respectfully submitted,

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